

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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SERGIO L. SHAW,

Plaintiff,

v.

BRIAN NEUMAIER<sup>1</sup>,

Defendant.

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ORDER

09-cv-747-bbc

Plaintiff Sergio L. Shaw was granted leave to proceed in this action on December 30, 2009. On February 8, 2010, defendant Brian Neumaier answered plaintiff's complaint, raising various affirmative defenses. Now plaintiff has filed a document titled "Memorandum and Response for Motion to Dismiss by the Defendant," dkt. #18, in which he asks the court to not dismiss his complaint.

Fed. R. Civ. P. 12(b) permits a defendant to avoid litigation of a case if plaintiff's allegations of fact are insufficient to make out a legal claim against the defendant. Although defendant has raised certain affirmative defenses in his answer, he has not filed a motion to

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<sup>1</sup>The caption has been updated to reflect the correct spelling and full name of the defendant.

dismiss. If such a motion were to be filed, plaintiff would be allowed to respond to it. Otherwise, it is not necessary for plaintiff to respond to defendant's answer. Indeed, Fed. R. Civ. P. 7(a) forbids a plaintiff from submitting a reply to an answer unless directed by the court. No such order has been entered in this case. Plaintiff should be aware, however, that he is not prejudiced by Rule 7(a). Under Fed. R. Civ. P. 8(b)(6), the court assumes that the plaintiff denies the answer. Therefore, although plaintiff is not permitted to respond to defendant's answer, the court assumes that he has denied the factual statements and affirmative defenses raised in that answer.

ORDER

IT IS ORDERED that plaintiff's response to defendant's answer, dkt. #18, will be placed in the court's file but will not be considered.

Entered this 19<sup>th</sup> day of February, 2010.

BY THE COURT:

/s/

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BARBARA B. CRABB  
District Judge